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VIA EMAIL

June 28, 2023

Beth Wilkinson
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Dear Beth Wilkinson and Bambo Obaro:

Re: Factual inaccuracies in Microsoft/Activision court filing

I represent the Commissioner of Competition, who leads the Canadian Competition Bureau (the “**Bureau**”), an independent law enforcement agency responsible for, among other things, the administration and enforcement of the *Competition Act* (the “**Act**”). The Bureau has been investigating the proposed Microsoft/Activision merger pursuant to Part IX of the Act.

I am writing regarding the Defendants’ Memorandum of Law in Opposition to Motion for Preliminary Injunction (the “**Memorandum**”), dated June 16, 2023, in *Federal Trade Commission v. Microsoft Corporation and Activision Blizzard, Inc.* (Case No. 3:23-cv-02880-JSC). As described below, the Memorandum (attached as **Appendix A** for ease of reference) purports to make certain statements about other antitrust agencies’ review of the proposed Microsoft/Activision merger. These statements are incorrect at least with respect to the Bureau’s review.

The statements at issue in the Memorandum are as follows:

- **Page 3 (PDF Page 8), Lines 11-13:** “It is therefore unsurprising that *every single worldwide regulator that has examined the deal other than the FTC* has rejected this theory [that Xbox will take *COD* away from PlayStation] – including both the European Union and the UK’s Competition and Markets Authority (“CMA”).” [emphasis in original]
- **Page 8 (PDF Page 13), Lines 12-15:** “As a result of these efforts, all but one foreign regulator to pass on the issue [cloud gaming] has cleared the transaction. The lone exception is the United Kingdom’s CMA. But like the European Commission and other global competition authorities, the CMA rejected the FTC’s core theories of harm here, tied to console foreclosure and subscription service foreclosure.”
- **Page 17 (PDF Page 22), Lines 6-9:** “Ultimately, Lee’s analysis provides no basis to disregard the real world, where Sony has a favorable offer for *COD*, Xbox has made plain that it wants to provide *COD* to Sony (and in fact needs to continue to sell to Sony), and regulators around the world all agree that withholding *COD* from Sony would be unprofitable and is thus not a serious concern.”

Contrary to the foregoing quotations from the Memorandum, in a videoconference on May 5, 2023, the Bureau communicated to Microsoft and Activision’s Canadian counsel that the Bureau has concluded that the proposed merger is likely to result in a substantial prevention and/or lessening of competition with respect to gaming consoles and multigame subscription services (as well as cloud gaming), and that the Bureau is continuing to monitor the transaction.

To correct the inaccuracies in the Memorandum, please provide this letter to the Hon. Jacqueline Scott Corley of the United States District Court for the Northern District of California, San Francisco Division as soon as possible before the close of the preliminary injunction hearing.

Yours truly,



Jonathan Bitran
Counsel

cc Rakesh N. Kilaru, Kieran Gostin, Grace Hill, Anastasia M. Pastan, Jenna Pavelec,
Wilkinson Stekloff LLP
Michelle Lally, Kaeleigh Kuzma, Reba Nauth, *Osler, Hoskin & Harcourt LLP*
James Weingarten, James Abell, Andrew Heimert, *Federal Trade Commission*

APPENDIX A

Defendants' Memorandum of Law in Opposition to Motion for Preliminary Injunction

Please see attached.